

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

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WILLIE JAMES HICKLES,

Plaintiff,

v.

Case No. 06-C-0032

KURT BENKLEY and  
ANTONIO MARTINEZ,

Defendants.

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**ORDER**

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Plaintiff Willie James Hickles filed a civil rights complaint under 42 U.S.C. § 1983 and moved for leave to proceed in forma pauperis. By its Order of January 18, 2006, the court required plaintiff to pay an initial partial filing fee of \$57.38 in order to proceed. *See* 28 U.S.C. § 1915(b). Plaintiff has now moved for an order permitting him to pay the initial partial filing fee from his release account. The trust account statement accompanying plaintiff's motion shows that plaintiff made a \$23.58 purchase from the commissary on January 26, 2006, and as a result had only \$45.74 in his account as of January 31, 2006. He was therefore unable to pay the initial partial filing fee within the twenty-one days allotted by the court's Order of January 18. Plaintiff did, however, have \$286.68 in his release account as of January 31. He seeks to use those funds to pay the initial partial filing fee.

The court has the power to order release of funds from plaintiff's release account to pay an initial partial filing fee. *Spence v. McCaughtry*, 46 F. Supp. 2d 861 (E.D. Wis. 1999). The use of

such funds is limited, however, to the amount that is necessary to pay the initial partial filing fee after all the funds in plaintiff's regular account have been applied toward that purpose. Here, it appears that plaintiff can pay most of the filing fee from his regular account.

**IT IS THEREFORE ORDERED** that the Secretary of the Wisconsin Department of Corrections or his designee shall collect from plaintiff's regular and release accounts the \$57.38 initial partial filing fee in accordance with 28 U.S.C. § 1915(b)(1). No deduction shall be made from plaintiff's release account until all of the funds in his regular account have been applied toward the fee. The payment shall be forwarded to the clerk of this court and clearly identified by the case name and the number assigned to this action.

Upon payment of the initial partial filing fee, the court will determine whether the action can continue to proceed. The court will review the complaint to determine that the action is not frivolous or malicious and that the complaint states a claim upon which relief can be granted. If the complaint does not meet this standard, the action will be dismissed.

**IT IS ALSO ORDERED** that copies of this order be sent to the warden of the institution where the inmate is confined and to Corey Finkelmeyer, Assistant Attorney General, Wisconsin Department of Justice, P.O. Box 7857, Madison, Wisconsin, 53707-7857.

Dated this 15th day of February, 2006.

s/ William C. Griesbach  
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William C. Griesbach  
United States District Judge